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and United States First Class Mail

January 30, 2023

Hon. Jerome H. Powell, Chairman  
Board of Governors of the  
Federal Reserve System  
c/o Ann E. Misback, Secretary  
Docket No. OP-1793  
20th St. & Constitution Ave. NW  
Washington, DC 20551

Dear Mr. Chairman:

RE: Federal Reserve System Notice titled "Principles for Climate-Related  
Financial Risk Management for Large Financial Institutions,"  
Docket No. OP-1793, 87 *Fed. Reg.* 75267 (December 8, 2022)

This letter presents comments of the National Federation of Independent Business (NFIB)<sup>1</sup> in response to the Federal Reserve System notice titled "Principles for Climate-Related Financial Risk Management for Large Financial Institutions" and published in the *Federal Register* of December 8, 2022. The notice sought comment on draft principles addressing climate-related financial risks for Board-supervised financial institutions with over \$100 billion in assets. NFIB urges the Board to withdraw the notice and proceed no further with the draft principles. The Board stated merely three months ago, and correctly, that "[t]he primary responsibility for addressing climate change itself rests with elected officials."<sup>2</sup> Moreover, the Board based its draft principles on unreasonable assumptions and failed to take account of the needs of small businesses.

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<sup>1</sup> NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies.

<sup>2</sup> Board of Governors of the Federal Reserve System (Board), *Financial Stability Report* (November 2022), available at <https://www.federalreserve.gov/publications/files/financial-stability-report-20221104.pdf> (visited January 20, 2023), p. 55.

## 1. The Board's Faulty Assumptions

The Board goes off the rails with its assumptions at the beginning of its notice:

The financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk to the safety and soundness of financial institutions and the financial stability of the United States. Financial institutions are likely to be affected by both the physical risks and transition risks associated with climate change (collectively, "climate-related financial risks"). Physical risks refer to the harm to people and property arising from acute, climate-related events, such as hurricanes, wildfires, floods, and heatwaves, and chronic shifts in climate, including higher average temperatures, changes in precipitation patterns, sea level rise, and ocean acidification. Transition risks refer to stresses to certain institutions or sectors arising from the shifts in policy, consumer and business sentiment, or technologies associated with the changes that would be part of a transition to a lower carbon economy.<sup>3</sup>

*First*, the Board cites no evidence whatsoever for its proposition in the notice that "[t]he financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk to the safety and soundness of financial institutions and the financial stability of the United States."<sup>4</sup> *Secondly*, the Board made clear only three months ago that it has not even done the exploration necessary to reach any such conclusion.<sup>5</sup> *Thirdly*, the Board has

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<sup>3</sup> 87 Fed. Reg. 75267, cols. 2 and 3 (footnotes omitted).

<sup>4</sup> The assertion in the Board's notice that "financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk" (emphasis added) is contradicted by the notice itself. The notice says (87 Fed. Reg. at 75268, col. 2:

Physical and transition risks associated with climate change could affect households, communities, businesses, and governments — damaging property, impeding business activity, affecting income, and altering the value of assets and liabilities. These risks may be propagated throughout the economy and financial system. As a result, the financial sector may experience credit and market risks associated with loss of income, defaults and changes in the values of assets, liquidity risks associated with changing demand for liquidity, operational risks associated with disruptions to infrastructure or other channels, or legal risks. (footnote omitted and emphasis added)

When the Board uses language like "could affect," "may be propagated," and "may experience," it has no basis for concluding that the financial impacts of climate change and transition to a lower carbon economy do, in fact, "pose an emerging risk."

<sup>5</sup> Board, *Financial Stability Report* (November 2022) (visited January 20, 2023), p. 55 ("The Federal Reserve's climate scenario work includes assessing risks both to individual financial institutions and to the financial system more broadly. Next year, the Federal Reserve plans to engage with a small set of the largest bank holding companies to conduct a pilot supervisory climate scenario analysis exercise. This is distinct and separate from the Board's bank stress tests, which are designed to assess whether large banks have enough capital to continue lending to households and businesses during a severe recession. The Board's climate scenario analysis exercise is exploratory in nature and does not have capital consequences.").

inappropriately lumped together under the rubric of "physical risks" natural disasters (hurricanes, wildfires, floods, and heatwaves), for which historical meteorological data specific to particular geographies demonstrate risk, with more generalized phenomena based on predictions about the future (chronic shifts in climate, including higher average temperatures, changes in precipitation patterns, sea level rise, and ocean acidification).<sup>6</sup> *Finally*, the Board assumes a "transition to a lower carbon economy" that involves "shifts in policy, consumer and business sentiment, or technologies" that cause "stresses to certain institutions or sectors." While the Board's statements in the notice about transition risks are somewhat vague, they seem to recognize that crushing industries dependent on fossil fuels may have an adverse effect on mega-banks. But the Board's assumptions about the "transition to a lower carbon economy" fail to take account that the American electorate might choose not to make such a transition and instead to accept any resulting adverse climate consequences or, perhaps more likely, might make adaptive changes over time to mitigate or accommodate changes in the climate.

## 2. The Board's Failure to Take Account of the Needs of Small Business

The Board appears to assume that, because its draft principles would apply only to Board-supervised financial institutions with over \$100 billion in assets, those principles would have no effect on small businesses. But the Board makes clear that it seeks with its draft principles to "promote a consistent understanding of how climate-related financial risks can be effectively identified, measured, monitored, and controlled among the largest institutions, those with over \$100 billion in total consolidated assets."<sup>7</sup> And having risks "identified, measured, monitored, and controlled" requires collection of information. Plainly, implementation of the Board's draft principles would require the mega-banks to gather and report a range of information. Less plain is how the Board expects the mega-banks to generate the information.

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<sup>6</sup> The Federal Reserve may reasonably consider it important to exercise its existing supervisory authority to prevent a hypothetical mega-bank from both centralizing all its computerized recordkeeping of accounts in a single building in Miami, Florida, and centralizing all its electronic backup for that computerized recordkeeping in a single building in Santa Ana Canyon, California, due to the risk of bank failure from the simultaneous destruction of both buildings by the simultaneous occurrence of a major hurricane in Miami (a location hurricanes demonstrably have frequented) and a wildfire in Santa Ana Canyon (a location wildfires demonstrably have frequented). But protection based on climate guesswork incorporated in the notice's draft principles is a far cry from such protection against particularized risks of specific natural disasters demonstrated by historical data relevant to a defined geographic area.

<sup>7</sup> 87 Fed. Reg. 75267, col. 3.

Congress has by law made clear the importance of taking careful account of the needs of small businesses in agency rulemaking.<sup>8</sup> The Board should take care, if, contrary to NFIB's recommendation, the Board proceeds any further with its draft principles, to ensure that the impact of the principles does not extend beyond the mega-banks to which the Board intends to apply the principles. In particular, the principles should not require mega-banks to obtain climate-related information from the mega-bank's vendors and customers, such as small and independent businesses. Small and independent businesses cannot afford the burden and expense of tracking and reporting climate-related information to mega-banks. Unlike large businesses, small and independent businesses cannot afford the experts, accountants, and lawyers needed to comply with complex government reporting regimes; regulatory compliance often is a do-it-yourself project for an already overburdened small business owner. Also, the proposed rule may discourage small businesses from seeking access to financing from mega-banks, because of the burden of climate-related paperwork that dealing with mega-banks may involve. Unless the Board takes great care to protect non-Board-regulated small and independent businesses from the impact of the draft principles, the principles could have a substantial adverse financial impact on them.

Protection of small and independent businesses merits the Board's careful attention. As President Biden has said:

Small businesses are critical to our success as a Nation. They make up 90 percent of businesses in the United States, employ nearly half of America's private sector workers, and create two-thirds of new jobs, and bring opportunity to every corner of our Nation.<sup>9</sup>

The White House also has noted that small businesses "account for 44 percent of U.S. GDP[.]"<sup>10</sup>

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<sup>8</sup> In paragraph 2(a)(4) of the Regulatory Flexibility Act (RFA), Public Law 96-354, 5 U.S.C. 601 note, Congress declared that "the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity [.]". Congress also noted in paragraph 2(a)(6) of the RFA that "the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation [.]".

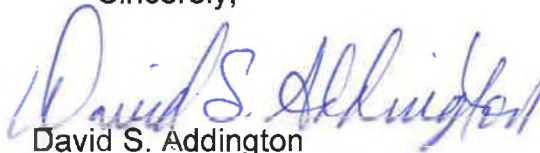
<sup>9</sup> Presidential Proclamation No. 10187, 86 *Fed. Reg.* 22339 (April 23, 2021) (World Intellectual Property Day).

<sup>10</sup> White House Fact Sheet: Biden-Harris Administration Increases Lending to Small Businesses in Need, Announces Changes to PPP to Further Promote Equitable Access to Relief (February 22, 2021) (available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/22/fact-sheet-biden-harris-administration-increases-lending-to-small-businesses-in-need-announces-changes-to-ppp-to-further-promote-equitable-access-to-relief/?mclid=935daf0ad12a11ecb8023b2209d859a3>) (visited January 20, 2023).

The Board does not set its own goals; Congress sets them, by law. Congress has given the Board by law these goals, and only these goals: "maximum employment, stable prices, and moderate long-term interest rates."<sup>11</sup> There is no additional statutory goal for the Board to achieve a lower carbon economy. If the Board wishes to claim power to set climate change policy, it must point to a statutory grant of that power to the Board,<sup>12</sup> and no such grant exists.

You recently said, wisely: "But without explicit congressional legislation, it would be inappropriate for us to use our monetary policy or supervisory tools to promote a greener economy or to achieve other climate-based goals. We are not, and will not be, a 'climate policymaker.'"<sup>13</sup> Please withdraw the Board's notice of draft principles on climate-related financial risks.

Sincerely,



David S. Addington

Executive Vice President and General Counsel

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<sup>11</sup> Section 2A of the Federal Reserve Act of 1913, as amended (12 U.S.C. 225a).

<sup>12</sup> An agency has no power unless Congress has conferred the power on the agency by statute. *NFIB v. Department of Labor, OSHA*, 142 S. Ct. 661, 665 (2022) ("Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided."). Indeed, to support a claim of power of the breadth and impact of the power to set climate change policy, the Board must show a clear congressional authorization in law that has granted such a power to the Board. *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2609 (2022).

<sup>13</sup> Jerome H. Powell, Chair, Board, *Remarks at the Panel on "Central Bank Independence and the Mandate -- Evolving Views,"* Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, Sweden (January 10, 2023), available at <https://www.federalreserve.gov/newsevents/speech/files/powell20230110a.pdf> (visited January 20, 2023) (footnote omitted).